



3737

PTO/SB/21 (01-08)
Approved for use through 04/30/2008. OMB 0651-0031
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TRANSMITTAL FORM

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Total Number of Pages in This Submission 15

Application Number	09,853,428
Filing Date	May 10, 2001
First Named Inventor	Brainard, George
Art Unit	3739
Examiner Name	Gibson, Roy D.
Attorney Docket Number	

ENCLOSURES (Check all that apply)

- | | | |
|--|--|---|
| <input checked="" type="checkbox"/> Fee Transmittal Form
<input checked="" type="checkbox"/> Fee Attached
<input checked="" type="checkbox"/> Amendment/Reply
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<input type="checkbox"/> Affidavits/declaration(s)
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Incomplete Application
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under 37 CFR 1.52 or 1.53 | <input type="checkbox"/> Drawing(s)
<input type="checkbox"/> Licensing-related Papers

<input type="checkbox"/> Petition
<input type="checkbox"/> Petition to Convert to a
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(Appeal Notice, Brief, Reply Brief)

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Check in the amount of \$525.00
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Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Wenger Law Offices		
Signature			
Printed name	Patricia A. Wenger		
Date	April 29, 2008	Reg. No.	42,218

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature			
Typed or printed name	Patricia A. Wenger	Date	April 29, 2008

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PTO/SB/17 (10-07)

Approved for use through 06/30/2010. OMB 0651-0032

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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Effective on 12/08/2004.

Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL

For FY 2008

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 325.00

Complete if Known

Application Number	09/853,428
Filing Date	May 10, 2001
First Named Inventor	Brainard, George
Examiner Name	Gibson, Roy D.
Art Unit	3739
Attorney Docket No.	

METHOD OF PAYMENT (check all that apply)☒ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____☐ Deposit Account Deposit Account Number: _____ Deposit Account Name: _____

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee
☐ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☐ Credit any overpayments**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	310	155	510	255	210	105	
Design	210	105	100	50	130	65	
Plant	210	105	310	155	160	80	
Reissue	310	155	510	255	620	310	
Provisional	210	105	0	0	0	0	

2. EXCESS CLAIM FEES**Fee Description**

Each claim over 20 (including Reissues)

Fee (\$)	Small Entity Fee (\$)
50	25

Each independent claim over 3 (including Reissues)

210	105
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Multiple dependent claims

370	185
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Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
32	12	25.00	300.00

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
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- 3 or HP = _____ x _____ = _____

HP = highest number of independent claims paid for, if greater than 3.

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$260 (\$130 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
_____	_____	_____	_____	_____

- 100 = _____ / 50 = _____ (round up to a whole number) x _____ = _____

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Fees Paid (\$)

Other (e.g., late filing surcharge): _____

SUBMITTED BY

Signature		Registration No. (Attorney/Agent) 42,218	Telephone 610-566-3040
Name (Print/Type)	Patricia A. Wenger		Date April 29, 2008

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.: 09/853,428 : FILING DATE: May 10, 2001
ART UNIT: 3739 : EXAMINER: Gibson, Roy Dean
FIRST NAMED INVENTOR : George Brainard
TITLE: Photoreceptor System for Melatonin Regulation and Phototherapy

05/08/2008 SDENB0B3 00000013 09853428

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Honorable Commissioner for Patents
Alexandria, VA 22313-1450:

**RESPONSE TO OFFICE ACTION DATED OCTOBER 29, 2007, INTERVIEW
SUMMARIES, AND CLAIM AMENDMENTS**

I. Interview Summary for Interview on March 26, 2008

Present were George Brainard, Gena Glickman, Patricia A. Wenger, and Roy D. Gibson. Applicants provided information including a presentation and authoritative references to Examiner to point out that Applicants' claims 1, 2, 5, 11 - 14, 21, and 22 relate to a spectral composition of at least one enhanced spectral region comprising at least one peak of emitted light within the range of 435 - 488 nm. In addition, among other arguments, Applicants pointed out to the Examiner that Gerdt's (6,235,046) invention teaches blocking, rather than emitting, a peak of light at 435 nm. Without accepting that Gerdt teaches blocking light having a peak intensity in the range of 430 - 440 nm, Applicants' further pointed out that Gerdt's invention would teach blocking, rather than emitting, light at the range of 430 - 440 nm, while Applicants' claims 1, 2, 5, 11 - 14, 21, and 22 relate to a spectral composition of at least one enhanced spectral

region comprising at least one peak of emitted light within the range of 435-488 nm. It is Applicants understanding that the Examiner withdrew from his position in the Office Action that Gerdt's invention teaches blocking light having a peak intensity in the range of 425 - 445 nm.

In addition, among other information provided, Applicants provided a presentation and authoritative references to Examiner to point out that Applicants' findings relating to the range of optical radiation relating to the stimulation at least one of the mammalian circadian, photoneural, neuroendocrine or neurobehavioral systems were not expected. It is Applicants' understanding that arguments presented, including those pointing out that the findings were unexpected, overcame the Examiner's rejection that Claim 27 is unpatentable under 35 U.S.C. section 103(a) as being unpatentable over Hegyi (5,235,178) or typical commercial light or exposure meters.

II. Interview Summary for Telephone Interview on March 31, 2008

Examiner made reference to Vreman, et al. U.S. patent number 6,350, 275 in relation to claims 1, 2, 5, 11 - 14, 21, and 22. Applicants pointed out to the Examiner that contrary to Applicants' invention, Vreman, et al. teach mounting the light source on the body of the user. It is Applicants' understanding that the Examiner would be satisfied if Applicants amended claims 1, 2, 5, 11 - 14, 21, and 22, to include the limitation that that the light source is not mounted on the body of the at least one mammal.

III. Interview Summary for Telephone Interviews on April 16, 2008 and April 28, 2008

On April 16, 2008, Examiner made reference to Teicher, et al., U.S. patent number 6,554,439, as prior art in relation to claims 1, 2, 5, 11 - 14, 21, 22 and 27. On

April 28, 2008, Applicants pointed out to the Examiner that Applicants' provisional application, the benefit of which was claimed in the current application, was filed on May 10, 2000; which is prior to the filing date of the Teicher et al., U.S. patent number 6,554,439. As a result, the Examiner will refrain from considering Teicher, et al., U.S. patent number 6,554,439, as prior art.

IV. RESPONSE TO ELECTION/RESTRICTION REQUIREMENT

On October 3, 2007, Applicant elected claims 1, 2, 5, 11, 12, 13, 14, 21, 22, and 27 for examination without prejudice, and with traverse. Applicant submitted that it would not be a serious burden on the Examiner if the election were not required.

V. CLAIM OBJECTIONS

The term "peak sensitivity" is not correct, and Applicants have amended the claims to remove the term "peak sensitivity". Applicants do not either agree or disagree with Examiner's assumption relating to the term "peak intensity" as Applicants chose other words in their amendments where "peak sensitivity" was removed.

VI. CLAIM REJECTIONS – 35 USC § 102

Applicants traverse Examiner's rejection of claims 5, 21, and 22 which were rejected under 35 U.S.C. § 102(e). Applicants currently cancel claims 5, 21 and 22, which Applicants intend to resubmit for further prosecution in a continuation application.

Consistent with Applicants' interview with Examiner on March 26, 2008 and telephone interview of March 31, 2008, Applicants currently: cancel claim 1 that is resubmitted in amended form as claim 31, cancel claim 11 that is resubmitted in amended form as claim 36, and cancel claim 13 that is resubmitted in amended form as claim 38; all of the amendments include the limitation that that the light source is not mounted on

the body of the at least one mammal, and clearly state the limitation of a spectral composition of at least one enhanced spectral region comprising at least one peak of emitted light within the range of 435-488 nm. In addition, claims 2, 12 and 14 are amended to include the limitation that that the light source is not mounted on the body of the at least one mammal, and clearly state the limitation of a spectral composition of at least one enhanced spectral region comprising at least one peak of emitted light within the range of 435-488 nm.

All of the amendments to claims 2, 12, 14 and 31 - 56, other than the amendments to include the limitation that that the light source is not mounted on the body of the at least one mammal, are to better claim example embodiments of the invention and are not narrowing amendments made for reasons related to patentability, such as, overcoming applied art.

Applicants further note that claims 2, 12 and 14 now depend from allowable claims.

Claim 27 has been canceled and rewritten as claims 28 – 30 to better claim example embodiments of the invention and are not narrowing amendments made for reasons related to patentability, such as, overcoming applied art.

VII. AMENDMENTS

Amend the claims as follows: